THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1809 of 2006

Dated:01.02.2006

Between:

Hyderabad Pan Shop Owners Association, and others.

…Petitioner

And

The Commissioner, Municipal Corporation of Hyderabad,

Tank Bund, Hyderabad.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION No.1809 of 2006

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ORDER:

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Hyderabad Pan Shop Owners Association, its President and one of its members filed the instant writ petition seeking a writ of mandamus declaring the action of the respondent-Municipal Corporation of Hyderabad (MCH) in removing the shops of

the petitioners by dispossessing them without conducting any enquiry and without giving any opportunity, as illegal and unjust. The petitioners also seek a consequential direction not to remove their shops without giving a right of hearing.

The first petitioner statedly espouses the cause of a large number of persons who eke out living by running Pan Shops (Betel leaves) in the twin cities of Hyderabad and Secunderabad. Though the President and one of the members are made parties, all the members of the first petitioner-Association are not made parties. However, the learned Counsel for the petitioners submits that most of the members are served notices by the respondent on 09.01.2006 alleging that those persons have set up Pan Shops on the road/abutting the road by encroaching the road margin/pavement/footpath, and therefore, the members individually were directed to voluntarily remove and vacate the encroachments within seven days. They were also informed that default on their part would entail for removal under Section 405 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act'). The learned Counsel for the petitioners vehemently contends that the respondent initiated action against the members of the first petitioner-Association in purported implementation of the order of this Court dated 27.12.2005 made in W.P.No.20228 of 2005. According to the learned Counsel, this Court only directed to conduct enquiry to find out the business people who occupied/encroached on the road margin, and the judgment was not intended to remove all the persons carrying on business on the roadside en masse. He submits that all the members of the first petitioner-Association have been obtaining licences from MCH for the last twenty years and they cannot be treated as encroachers. Lastly, he would submit that unless and until an enquiry is conducted after giving notice to each member, the respondent-Corporation cannot unilaterally come to a conclusion that a Pan Shop owner is an encroacher.

The learned Standing Counsel for the respondent-Corporation submits that there are more than 10,000 small petty business people in twin cities carrying on business occupying the pavements, footpaths and road margins, and this Court in its order referred to hereinabove has directed MCH to take up a drive to remove encroachments on pavements and footpaths. As directed by this Court, MCH is giving notices to persons to remove encroachments and when they fail to do so, MCH is removing the encroachments.

The Division Bench of this Court in its order dated 29.12.2005 in W.P.No.20228 of 2005, *inter alia,* directed as follows.

> The Municipal Corporation of Hyderabad is directed to undertake a drive to remove encroachments from all pavements and footpaths throughout the twin cities of Hyderabad and Secunderabad. The drive shall be started within a period of one week from today and shall be continued for a period of one month. The concerned authority should first give notice to the persons making encroachments of footpaths and pavements so as to enable them to voluntarily remove the encroachments. If they fail to do so within a reasonable time, then action may be taken for removal of the encroachments.

A plain reading of the above directions issued by this Court would not lend any support to the submissions made by the learned Counsel for the petitioners. This Court directed MCH to remove all the encroachments from the pavements/footpaths through out the twin cities after issuing the notice to the encroachers to remove the encroachments voluntarily. This Court further directed MCH that if the persons failed to remove encroachments after receiving notice within a reasonable time, MCH has to remove the encroachments. In this case, this Court is convinced that while issuing notice to the members of the first petitioner-Association on 09.01.2006, the respondent strictly followed the directions in letter and spirit and the action is unexceptionable.

The submission of the learned Counsel for the petitioners that the petitioners are not encroachers, and that by reason of the licences they cannot be treated as encroachers, cannot be accepted. Members of the first petitioner-Association admittedly are not owners and they are admittedly having Pan Shops on the road margins. Mere grant of licence by MCH for the purpose of carrying on the trade does not render the possession of the municipal land by the petitioners legal. Public streets as defined in Section 2(46) of the Act are intended essentially for the people to pass and re-pass and they are not intended for occupying by business people. When a business person occupies a road margin, it has to be treated as encroachment. In the fitness of things and to be fair to such encroachers, MCH has issued notices and that is sufficient compliance with the principles of fairness. The writ petition has not demonstrated any right for compelling the Corporation to conduct enquiry before taking action against them in accordance with the directions of this Court.

The Writ Petition is devoid of merits and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

01.02.2006

vs